IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8335 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HITESHBHAI MANHARLAL JARIWALA

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8335 of 2001

MR NM KAPADIA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

The detenu Hiteshbhai Manharlal Jariwala, who is detained by virtue of an order dated 31st August, 2001 passed by the Commissioner of Police, Surat City in

exercise of power under Section 3 of the PASA Act, has filed this petition through his father. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. Learned Advocate Mr. Kapadia appearing for the petitioner has restricted his argument to the fact that a representation addressed to the Chief Minister by father of the detenu on Sept. 11, 2001 supported by an affidavit of Rakeshbhai Ratilal Jariwala and Noorali Barkatali Duwavala has been rejected without undertaking requisite exercise. He submitted that these witnesses have stated on oath that what was stated by anonymous witnesses was not correct and no such incident had occurred. It was therefore for the authority concerned to ascertain whether the anonymous witnesses had given correct version or not by cross-checking their version, which has not been done. The requirement of consideration of representation has resulted into a mechanical rejection and he therefore urged that the non-consideration of the representation in its proper perspective has resulted into denial of right of the detenu of making an effective representation and his continued detention would therefore vitiate. Mr. Kapadia has placed reliance in a judgement delivered by this Court in the case of Valilla Inayatkhan Pathan Vs. Commissioner of Police (Special Civil Application No. 1711 of 2000) on 1.5.2000, wherein similar view was taken.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contention raised before this Court, what is required to be considered is whether the Government can be said to have considered the representation in its proper perspective. The detenu had a right of making an effective representation as envisaged under Article 22(5) of the Constitution of India. When such representation is made, the authority concerned is required to give due weightage to it on the

grounds stated therein. Here in the instant case, the representation was made specifically stating that the incidents narrated by the anonymous witnesses had not taken place. When this version was sought to be supported by affidavits of two independent persons, the concerned authority in the Government was required to reconsider the decision after verifying the correctness of the version of the anonymous witnesses or the persons swearing affidavit in support of the representation. No such exercise seems to have been undertaken. Learned AGP also, after consulting the file, is not able to plead this aspect. The representation therefore appears to have been rejected mechanically, resulting into rendering the provisions of Art. 22(5) as non-existent. The right of the detenu is therefore infringed and his continued detention would be vitiated. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 31st August, 2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu Hiteshbhai Manharlal Jariwala be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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